

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 911 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

DEVSING CHAMARIA RATHWA

Versus

BATULBEN ABBAS VOHRA

Appearance:

MR MA KALATHIL for Petitioners
None present for respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/11/98

ORAL JUDGEMENT

Challenge has been made by this Civil Revision Application by the defendants-petitioners to the order of the Civil Judge (J.D.) dated 31.3.1997 under which the Court has declined to grant time to file the written statement to the suit by him.

2. The learned counsel for the petitioners contended that if the trial Court was not inclined to take

information from the Mamlatdar concerned regarding whereabouts of the documents which the defendant-petitioners want to inspect, it may do so, but the independent petitioner should have been granted time to file the written statement.

3. I have given my thoughtful consideration to the submission of the learned counsel for the defendants-petitioners.

4. From the record of this Civil Revision Application and the order impugned therein, I find that more than sufficient time has been granted by the learned trial Court to the defendants-petitioners to file the written statement to the suit. One more important fact I notice from the impugned order is that the plaintiff-respondents have not objected to the application of the defendants for the adjournment to submit the reply to the suit. The reason appears to be that the plaintiffs-respondents are having in their favour the interim injunction granted by the trial Court. In view of this fact, there is all the possibility that the plaintiffs-respondents are not interested in earlier disposal of the suit. In view of these facts, I fail to see any justification in the approach of the trial Court to decline to grant any more adjournment to the defendants-petitioners for filing of the written statement. In the facts and circumstances of the case, the learned trial Court should not have taken such a harsh attitude or approach and the time should have been granted for filing of the written statement. At the most, if the Court considers that the defendants-petitioners are delaying the suit, the time could have been granted on the payment of the costs also, but the defence should not have been ordered to be closed. It is a case where the suit was at the stage of framing of the issues. Order 8, Rule 1 of the Civil Procedure Code provides that the defendant shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. From reading of this provision, I find that the learned trial Court is sufficiently clothed with the power to grant time to the defendant in a suit for filing of the written statement. The learned counsel for the petitioners is also in agreement that he may not be insisted at this stage for calling for the documents from the office of the Mamlatdar, but an opportunity may be given to the defendants-petitioners to file written statement. After filing the written statement for production of the documents in his defence, he will take appropriate steps as provided under the C.P.C.

5. Taking into consideration the totality of the facts of this case, I find it to be a fit case where interference of this Court calls for in the order of the learned trial Court dated 31.3.1997. In case the order of the trial Court impugned in this Civil Revision Application is allowed to stand, it will certainly amount to failure of justice and will cause irreparable loss to the defendants-petitioners.

6. In the result, this Civil Revision Application is allowed and the order of the Civil Judge (J.D.) dated 31.3.1997 in Regular Civil Suit No. 55 of 1995 is set aside and the defendants-petitioners are granted the last opportunity to file the written statement in the suit. The written statement shall be filed by the defendants-petitioners within a period of two months from today. In case they fail to file the written statement within the time limit granted by this Court for filing the written statement, this Civil Revision Application shall stand dismissed automatically without reference to the Court.

7. Civil Revision Application and Rule stand disposed of in the aforesaid terms with no order as to costs. Interim relief granted by this Court stands vacated.

Sd/- S.K. Keshote, J.

sdr/*